

AMENDED IN ASSEMBLY JULY 15, 2015

SENATE BILL

No. 387

Introduced by Senator Jackson

February 24, 2015

An act to amend ~~Section 6140 of~~ Sections 6086.15, 6140, and 6145 of, and to repeal and add Section 6140.16 of, the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 387, as amended, Jackson. ~~Attorneys: State Bar: attorneys:~~ annual membership fees.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The State Bar is governed by a board of trustees. Existing law authorizes the board, among other duties, to aid in all matters pertaining to the improvement of the administration of justice, including all matters that may advance the professional interests of the members of the State Bar. ~~Existing law, beginning January 1, 2015, until January 1, 2016, requires the board to charge an annual membership fee for active members of up to \$315 for 2015.~~

Existing law requires the State Bar to issue an Annual Discipline Report describing the performance and condition of the State Bar discipline system. Existing law requires the report to cover the previous calendar year and to include accurate and complete descriptions of, among other things, the existing backlog of cases within the discipline system and a description of the programs at the State Bar directed at preventing acts warranting discipline.

This bill would revise the content of the information in the report. The bill would additionally require the backlog of cases to include other

matters opened in the Office of the Chief Trial Counsel and pending beyond 6 months after receipt, as specified.

Existing law, beginning January 1, 2015, until January 1, 2016, requires the board to charge an annual membership fee for active members of up to \$315 for 2015.

This bill would, until January 1, 2017, require the board to charge that annual membership fee for 2016.

Existing law requires the State Bar to review its workload standards to measure the effectiveness and efficiency of its disciplinary activities, including, but not limited to, the State Bar Court and the Client Security Fund, and to provide guidance to the State Bar and the Legislature in allocating resources, as specified.

This bill would delete that requirement. The bill would, instead, require the State Bar to develop and implement a specified workforce plan for its discipline system and conduct a public sector compensation and benefits study to reassess the numbers and classifications of staff required to conduct the disciplinary activities. This bill would require the State Bar to conduct a thorough analysis of its operating costs and develop a spending plan to determine a reasonable amount for the annual membership fee, as specified. The bill would require the State Bar to report to the Legislature by May 15, 2016.

Existing law requires the State Bar to engage the services of an independent public accounting firm for an audit of its financial statement for each fiscal year.

This bill would require, effective January 1, 2016, the State Bar to contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar, including an audit of its financial statement, internal controls, and relevant management practices, as provided, and would require the office to provide a copy of the audit to the State Bar, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.*

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6086.15 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 *6086.15. (a) The State Bar shall issue an Annual Discipline*
- 4 *Report by April 30 of each year describing the performance and*

1 condition of the State Bar discipline ~~system~~. *system, including all*
2 *matters that affect public protection.* The report shall cover the
3 previous calendar year and shall include accurate and complete
4 descriptions of all of the following:

5 (1) The existing backlog of cases within the discipline system,
6 ~~including, but not limited to,~~ *including the number of complaints*
7 *as of December 31 of the preceding year that were pending beyond*
8 *six months after receipt without dismissal, admonition, or the filing*
9 *of a notice to show cause, of disciplinary charges. In addition to*
10 *written complaints received by the State Bar, the backlog of cases*
11 *shall include other matters opened in the Office of Chief Trial*
12 *Counsel and pending beyond six months after receipt without the*
13 *filing of notices of disciplinary charges, or the initiation of other*
14 *disciplinary proceedings in the State Bar Court for the purpose*
15 *of seeking the imposition of discipline against a member of the*
16 *State Bar, and tables showing time periods beyond six months and*
17 *the number in each category and a discussion of the reason for the*
18 *extended periods.*

19 (2) The number of inquiries and complaints and their disposition.

20 (3) ~~The number number,~~ *average pending times,* and types of
21 matters self-reported by members of the State Bar pursuant to
22 subdivision (o) of Section 6068 and subdivision (c) of Section
23 6086.8.

24 (4) ~~The number number,~~ *average pending times,* and types of
25 matters reported by other sources pursuant to Sections ~~6086.7 and~~
26 ~~6086.8:~~ 6086.7, 6086.8, 6091.1, *subdivision (b) of Section 6101,*
27 *and Section 6175.6.*

28 (5) The speed of complaint handling and dispositions by ~~type.~~
29 *type, measured by the median and the average processing times.*
30

31 (6) ~~The number number,~~ *average pending times,* and types of
32 ~~filed notices to show cause of disciplinary charges~~ and formal
33 disciplinary outcomes.

34 (7) ~~The number number,~~ *average pending times,* and types of
35 ~~informal discipline outcomes,~~ *other matters,* including petitions
36 ~~to terminate practice,~~ *practice pursuant to Section 6180 or 6190,*
37 ~~interim suspensions and license restrictions,~~ *criminal conviction*
38 ~~monitoring,~~ *restrictions pursuant to Section 6007, motions to*
39 *enforce a binding arbitration award, judgment, or agreement*
40 *pursuant to subdivision (d) of Section 6203, motions to revoke*

1 *probation, letters of warning, private reprovls, admonitions, and*
2 *agreements in lieu of discipline.*

3 ~~(8) A description of the programs of the State Bar directed at~~
4 ~~assuring honesty and competence by attorneys.~~

5 ~~(9) A description of the programs of the State Bar directed at~~
6 ~~preventing acts warranting discipline.~~

7 *(8) The number, average pending times, and outcomes of*
8 *complaints involving a State Bar member who has been disbarred*
9 *or who has resigned, and is engaged in the unauthorized practice*
10 *of law, including referrals to district attorneys, city attorneys, or*
11 *other prosecuting authorities, or petitions to terminate practice*
12 *pursuant to Section 6180.*

13 *(9) The number, average pending times, and outcomes of*
14 *complaints against nonattorneys engaged in the unauthorized*
15 *practice of law, including referrals to district attorneys, city*
16 *attorneys, or other prosecuting authorities; petitions to terminate*
17 *practice pursuant to Section 6126.3; or referrals to prosecuting*
18 *authorities or actions by the State Bar pursuant to Section 6126.7.*

19 (10) A description of the condition of the Client Security Fund,
20 including an accounting of payouts.

21 (11) An accounting of the cost of the discipline system by
22 function.

23 (b) The Annual Discipline Report shall include statistical
24 information presented in a consistent manner for year-to-year
25 comparison and shall compare the information required under
26 subdivision (a) to similar information for the previous three years.
27 ~~The report shall include the general data and tables included in the~~
28 ~~previous reports of the State Bar Discipline Monitor where feasible.~~

29 (c) The Annual Discipline Report shall be presented to the Chief
30 Justice of California, to the Governor, to the Speaker of the
31 Assembly, to the President pro Tempore of the Senate, and to the
32 Assembly and Senate Judiciary Committees, for their consideration
33 and shall be considered a public document.

34 **SECTION 1.**

35 **SEC. 2.** Section 6140 of the Business and Professions Code,
36 as amended by Section 3 of Chapter 429 of the Statutes of 2014,
37 is amended to read:

38 6140. (a) The board shall fix the annual membership fee for
39 active members for 2016 at a sum not exceeding three hundred
40 fifteen dollars (\$315).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2017, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 3. Section 6140.16 of the Business and Professions Code is repealed.

~~6140.16. The State Bar shall review its workload standards to measure the effectiveness and efficiency of its disciplinary activities, including, but not limited to, the State Bar Court and the Client Security Fund, and provide guidance to the State Bar and the Legislature in allocating resources. The standards shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar's disciplinary activities. The review shall cover the calendar years of 1998, 1999, and 2000. The State Bar shall submit a report to the Legislature on its review of workload standards by June 30, 2001.~~

SEC. 4. Section 6140.16 is added to the Business and Professions Code, to read:

6140.16. (a) To align its staffing with its mission to protect the public as provided in Section 6001.1 and to provide guidance to the State Bar and the Legislature in allocating resources, the State Bar shall develop and implement a workforce plan for its discipline system and conduct a public sector compensation and benefits study. The workforce plan and compensation study shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar's disciplinary activities.

(b) The workforce planning shall include the development and recommendation of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.

(c) In addition to the requirements in subdivisions (a) and (b), the State Bar shall conduct a thorough analysis of its priorities

1 *and necessary operating costs and develop a spending plan, which*
2 *includes its fund balances, to determine a reasonable amount for*
3 *the annual membership fee that reflects its actual or known costs*
4 *and those to implement its workforce plan.*

5 *(d) The State Bar shall submit a report on its workforce plan*
6 *and spending plan to the Legislature by May 15, 2016, so that the*
7 *plans can be reviewed in conjunction with the bill that would*
8 *authorize the imposition of the State Bar's membership fee. The*
9 *report shall be submitted in compliance with Section 9795 of the*
10 *Government Code. The State Bar shall complete and implement*
11 *its workforce plan by December 31, 2016.*

12 *SEC. 5. Section 6145 of the Business and Professions Code is*
13 *amended to read:*

14 6145. (a) The board shall engage the services of an independent
15 national or regional public accounting firm with at least five years
16 of experience in governmental auditing for an audit of its financial
17 statement for each fiscal year. The financial statement shall be
18 promptly certified under oath by the Treasurer of the State Bar,
19 and a copy of the audit and financial statement shall be submitted
20 within 120 days of the close of the fiscal year to the board, to the
21 Chief Justice of the Supreme Court, and to the Assembly and
22 Senate Committees on Judiciary.

23 The audit shall examine the receipts and expenditures of the
24 State Bar and the State Bar sections to ensure that the receipts of
25 the sections are being applied, and their expenditures are being
26 made, in compliance with subdivision (a) of Section 6031.5, and
27 that the receipts of the sections are applied only to the work of the
28 sections.

29 The audit also shall examine the receipts and expenditures of
30 the State Bar to ensure that the funds collected on behalf of the
31 Conference of Delegates of California Bar Associations as the
32 independent successor entity to the former Conference of Delegates
33 of the State Bar are conveyed to that entity, that the State Bar has
34 been paid or reimbursed for the full cost of any administrative and
35 support services provided to the successor entity, including the
36 collection of fees or donations on its behalf, and that no mandatory
37 dues are being used to fund the activities of the successor entity.

38 In selecting the accounting firm, the board shall consider the
39 value of continuity, along with the risk that continued long-term

1 engagements of an accounting firm may affect the independence
2 of that firm.

3 (b) The board shall contract with the California State Auditor's
4 Office to conduct a performance audit of the State Bar's operations
5 from July 1, 2000, to December 31, 2000, inclusive. A copy of the
6 performance audit shall be submitted by May 1, 2001, to the board,
7 to the Chief Justice of the Supreme Court, and to the Assembly
8 and Senate Committees on Judiciary.

9 Every two years thereafter, the board shall contract with the
10 California State Auditor's Office to conduct a performance audit
11 of the State Bar's operations for the respective fiscal year,
12 commencing with January 1, 2002, to December 31, 2002,
13 inclusive. A copy of the performance audit shall be submitted
14 within 120 days of the close of the fiscal year for which the audit
15 was performed to the board, to the Chief Justice of the Supreme
16 Court, and to the Assembly and Senate Committees on Judiciary.

17 For the purposes of this subdivision, the California State
18 Auditor's Office may contract with a third party to conduct the
19 performance audit. This subdivision is not intended to reduce the
20 number of audits the California State Auditor's Office may
21 otherwise be able to conduct.

22 (c) *Effective January 1, 2016, the board shall contract with the*
23 *California State Auditor's Office to conduct an in-depth financial*
24 *audit of the State Bar, including an audit of its financial statement,*
25 *internal controls, and relevant management practices. The contract*
26 *shall include reimbursement for the California State Auditor's*
27 *Office for the costs of conducting the audit. The audit shall, at a*
28 *minimum, examine the revenues, expenditures, and reserves of the*
29 *State Bar, including all fund transfers. The California State*
30 *Auditor's Office shall commence the audit no later than January*
31 *1, 2016, and a copy of the audit shall be submitted by May 15,*
32 *2016, to the board, the Chief Justice of the Supreme Court, and*
33 *to the Assembly and Senate Committees on Judiciary. The audit*
34 *shall be submitted in compliance with Section 9795 of the*
35 *Government Code. This subdivision shall cease to be operative*
36 *January 1, 2017.*